

B17-344, “Constitution Square Economic Development Act of 2007”

Before the Committee on Finance and Revenue

The Honorable Jack Evans, Chairman

**September 26, 2007, 10:00a.m.
Room 120, John A. Wilson Building**



**Testimony of
Alan C. Levine
Assistant General Counsel
Office of Tax and Revenue**

**Natwar M. Gandhi
Chief Financial Officer
Government of the District of Columbia**

Good morning, Chairperson Evans, and members of the Committee on Finance and Revenue. I am Alan C. Levine, Assistant General Counsel for the Office of Tax and Revenue. I am pleased to present testimony on Bill 17-344, the “Constitution Square Economic Development Act of 2007.”

Constitution Square is a condominium development consisting of a mixed-use residential/retail/commercial office space project of approximately 900-1,000 units of residential condominium/apartment house (“housing element”), approximately 80,000 square feet of retail space (“retail element”), and approximately 1.2 million square feet of commercial office space (“office element”), located on lot 160 in Square 711 (the “Property”).

The bill defines the “Constitution Square Project” to include the acquisition, development, construction, installation, and equipping (including the financing, refinancing, or reimbursing of costs incurred) of the above development located on the Constitution Square Property.

The bill further defines the “Constitution Square Property” to include the real property, including any improvements thereon, located in Square 711,

Lot 160 (including the land for such lots even if subdivided into record lots, assessment and taxation lots, etc.).

The bill would add a new D.C. Code section 47-4610 that will:

- exempt the Constitution Square Project from recordation and transfer tax (D.C. Official Code §§ 42-1102 and 47-903, respectively);
- exempt purchases and rental of tangible personal property used or consumed in acquiring, developing and equipping the Project from sales tax;
- exempt from real estate tax the real property in the Project, including any improvements thereon, for a period of 10 consecutive real property tax years beginning in the tax year in which development begins. Moreover, under the bill, the exemptions for sales tax and real estate tax shall not exceed, in the aggregate, \$6 million; and
- provide that the exemptions for sales tax and real estate tax shall not be used to reduce the current dollar amount of real estate taxes due.

Thus, the owners of the Constitution Square Property shall continue to pay \$908,305.00 in real estate taxes for the half year periods and the exemptions only apply to increases in real estate taxes after the adoption of this bill.

OTR has concerns with the proposed bill.

First, the proposed bill provides a transfer and recordation tax exemption in perpetuity. The bill would be financially and administratively more feasible if the exemptions were limited to the initial property transfer only between the developer and the first purchaser. Moreover, the proposed bill mistakenly exempts the Constitution Square Project, which is defined above as just the start up phase. Thus, the exemption should refer to the Constitution Square Property.

Second, the bill grants a real property tax exemption for the Property including that part of the real property used for commercial space. The District has not generally granted such exemptions because they reduce the amount of rent the retail or offices have to pay the owner while other competitive businesses outside of the retail element of the project would not receive this benefit. See, for example, Square 2910 Residential

Development Stimulus Act of 2006 denying a real estate tax abatement to any part of property used for commercial purposes. We recommend that the exemption not cover the real property used for commercial space except for the grocery.

Under the bill, the real property exemption begins in the tax year when the developer begins development on the property. OTR is not staffed to know when a development begins. Thus, we recommend the bill be amended to require the developer to notify OTR's Director of Real Property, by certified mail, that development has started.

Also, there is an apparent discrepancy that needs to be clarified in proposed section 47-4610(d)(1). It provides a complete real estate tax exemption, whereas proposed section 47-4610(g) provides a real estate tax exemption only for increases in real estate taxes after the adoption of this bill.

Third, OTR objects to the exemption for sales tax on tangible personal property used or consumed in developing the Constitution Square Project except for the supermarket. One reason for our objection is that an exemption from sales tax may reduce the amount of rent the retail businesses

and commercial office space will have to pay the owner while other competitive businesses outside of the project would not receive this benefit. Moreover, the sales tax exemption encompasses interior improvements as well and will require the auditing of all contractors, subcontractors, suppliers and consultants working on the project to ensure the exemption and amounts.

Fourth, proposed section 47-4610(f) proposes a cap of \$6 million for only the sales and real estate tax exemptions in proposed sections (c) and (d) but, if enacted, ought to include the exemptions for transfer and recordation tax in the cap as well.

Fiscal Impact of Bill 17-344

OTR respectfully requests that the Council appropriate \$85,000 to cover the cost of two additional auditors to help administer this legislation and programming costs necessary to collect key data on the sales tax exemption.

The fiscal impact of this bill has not yet been determined but will be included in the fiscal impact statement that will be submitted to the Committee subsequent to this hearing.

Thank you, Chairman Evans, for the opportunity to comment on this bill. I would be happy to answer any questions you or other Council members might have at this time.